UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA, New York, N.Y.

v. 15 Cr. 0643-02(PKC)

JOHN GALANIS,

Defendant.

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May 23, 2016
2:25 p.m.

Before:

HON. P. KEVIN CASTEL,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
BY: BRIAN BLAIS
REBECCA MERMELSTEIN
AMY HECTOR
Assistant United States Attorneys

PELUSO & TOUGER
Attorneys for Defendant
BY: DAVID TOUGER

THE COURT: Please be seated.

This is United States of America against John Galanis.

Is the government ready?

MR. BLAIS: Yes. Good afternoon, your Honor. Brine Blais, Rebecca Mermelstein and Amy Hector for the government.

THE COURT: Good afternoon to you all.

And for the defendant?

MR. TOUGER: Yes, your Honor. David Touger, T-o-u-g-e-r, for Mr. Galanis.

And before we start, your Honor, I just want to thank you for giving us my vacation, and my wife thanks you, too.

THE COURT: All right. I hope it was a good one.

MR. TOUGER: It was.

THE COURT: All right. Good to see you, Mr. Touger. Good to see you, Mr. Galanis.

Let me hear from the government.

MR. BLAIS: Thank you, your Honor.

Let me start, as I did last week, with just a brief timeline. Then let me talk about the legal standard that applies here and then I will get into the bulk of the argument.

As your Honor is aware, this defendant was charged in the indictment that is pending before your Honor. He was actually not arrested per se in this district. On the date that arrest happened, he was on a plane flying from the West Coast here to New York, and so he actually surrendered when he landed in New York on September 24th and was presented in magistrate's court before Judge Ellis and at that time was released pursuant to an agreed-upon bail package that consists of the following: A $3 million personal recognizance bond secured by the signatures of four responsible parties, secured by $600,000 of cash or property having an equity value of $600,000 or more, which is in fact how it was secured, the surrender of his passport, and an agreement to make no new applications, travel restrict to the Southern and Eastern Districts of New York, the Northern, Southern and Central Districts of California and any necessary travel points, and strict pretrial supervision to include electronic monitoring with a GPS component.

The defendant was then arrested again on May 11th pursuant to the complaint in the new matter. He was arrested in the Southern District of California, San Diego, which is where he resides, and was presented before a magistrate in the Southern District of California on that date.

He was detained for a two-day period, pending a detention hearing, on May 13th, the Friday succeeding his arrest, and at that hearing the government did argue for detention. And my understanding of essentially what happened at that proceeding was the judge in San Diego said this is a really complicated matter, I'll defer to the courts in New York who have more familiarity with this matter, and the defendant was released pursuant to the existing bond conditions that were in place in the matter before your Honor. I don't believe there are any new conditions or any new restrictions that were put in place at that time. And then obviously he surrendered here today pursuant to the order that your Honor issued setting a detention or revocation proceeding here today.

I would say from a legal standpoint --

THE COURT: I am just curious. Was that a surrender or was that just an appearance?

MR. BLAIS: Well, it is an appearance. He appeared for the necessary processing here in connection -- in addition to this proceeding here today, however, he is surrendering with respect to his initial appearance in this district --

THE COURT: I see.

MR. BLAIS: -- on the second matter which will occur in magistrate's court at some point following this proceeding.

THE COURT: I understand.

MR. BLAIS: To just speak briefly about the legal standard: This matter here today is actually a little different than the proceeding that we had last week where there was a contention by the government that there was criminal activity that took place during the period of Jason Galanis' pretrial release. That is not the case here. We are not contending that there was a violation of federal, state or criminal law during the time of Mr. John Galanis' release. So we are not here under Section 3148(b), as we were last week. Instead, we are here pursuant to Section 3142(f), which is the general bail statute.

At the very end of 3142(f), it provides that a detention hearing may be reopened by the court at any time before trial if the court finds that information exists that was not known to the movant -- i.e., the government -- at the time of the hearing and that has material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person or the community.

And we contend, your Honor, that there are in fact new facts and circumstances that are available to the government that were not available at the time of the initial bail hearing in this matter back in September, and that obviously entails the new charges that were charged -- that were filed in this district. And I think, in connection with that and in connection with this particular defendant's history and characteristics, which I'll outline for your Honor, we do believe that revocation of bail is appropriate in this matter and that an order of detention is appropriate because we do believe both that this defendant does present a risk of flight despite the bail conditions that exist and also that he represents a financial danger to the community.

Let me start on the latter point first, and your Honor may be at least somewhat familiar with this particular defendant's criminal history but I think what it essentially demonstrates is that this defendant is a lifelong fraudster, that he has been involved in significant fraudulent activities for a long period of time, dating back to the early '70s. He has, as your Honor may be aware, two prior securities fraud convictions in this district, one dating back to 1973, where he was incarcerated for -- or ordered detained for a period of six months. He was then again, in a significant matter in front of Judge Brieant, convicted in 1987 of racketeering offenses in connection with securities fraud.

THE COURT: What year was that?

MR. BLAIS: 1987, your Honor.

THE COURT: OK.

MR. BLAIS: With a series of racketeering offenses related to a tax shelter scheme with a significant loss amount, and he was at the time sentenced by Judge Brieant to 27 years' imprisonment, which, as far as we can tell, was at the time the longest white-collar sentence that had been imposed to that time. Obviously, it has since been eclipsed by the Madoff sentencing and others but, nonetheless, a very significant sentence.

In connection with or following the trial in that matter, the defendant pled guilty to a state -- a New York State grand larceny conviction that was connected to the scheme that was charged federally. He ultimately was paroled from his federal term of imprisonment back in 2001 and had at that time an undischarged state sentence that still remained to be served. So he was paroled from the federal system to the state sentence.

THE COURT: The state sentence arose out of the same set of facts?

MR. BLAIS: I believe it arose out of the same set of facts; that is my understanding.

And while he was serving that state term of imprisonment he was participating in a work release program, and when he had approximately two weeks remaining on that work release program, he absconded. He fled from the work release program and was gone I believe for a period of about a month. He was ultimately charged federally with an escape violation. He then turned himself in about a month after he had fled, and the escape -- the federal charges were dismissed at that time and I believe then served a term of imprisonment -- and, again, the facts could be wrong because the rap sheets are sometimes cryptic, but I believe he was in prison to approximately 2004. So he was in prison for a period of approximately 17 years, from 1987 to 2004. Again, that is as best as I can deduce from the rap sheet.

And so despite having that significant period of imprisonment and the two prior convictions, he is now charged twice with further securities schemes -- the one that is pending before your Honor and the new charges that are brought -- that are still pending in magistrate's court. And not to go over the complaint again, but in significant part the complaint alleges -- and it is in Paragraph 43C of the complaint, that Mr. Galanis received the day after the first Tribal bond issuance -- and we talked about the specifics of that at the prior proceeding, but the day after that first $27 million dollars issuance, 2.3 million of the proceeds went directly to an account associated with Mr. Galanis and, as alleged in that paragraph, was then distributed at the direction of Mr. Galanis to members of his family, to an auto leasing agency -- it was a Mercedes-Benz loan servicing center -- approximately 180,000 of it went to a wholesale jeweler. So there are allegations in the complaint that Mr. Galanis essentially personally misappropriated $2.3 million of the proceeds of that specific Tribal bond issuance.

So we do believe, given the significant history here of fraudulent conduct and fraudulent behavior that was not in any way mitigated or deterred by a significant 17-year period of imprisonment, that Mr. Galanis does represent a danger to the community.

We also believe that Mr. Galanis represents or poses a risk of flight. Now, it is true that in connection with the matter pending before your Honor the government does not deny that he has appeared at all proceedings. He is on electronic monitoring so there is some ability to see where he is, although, as your Honor knows, electronic monitoring is not a panacea to prevent flight. It obviously is a tool assisting the location of the defendant, but it is not a perfect means to ensure that somebody doesn't flee. And the reality here is with the new charges that were filed against the defendant, the potential guidelines' range that he is facing is significant and in fact has more than doubled from what the likelihood was in the case facing your Honor. The --

THE COURT: Well, let me inquire. It would seem to me that if the defendant were convicted in the case before me, that sentencing decision if it preceded any trial in the Tribal bond issuance case would not take account of any -- could not take account of any conviction in that case in determining sentence. It may be in the Tribal bond issuance case, assuming it is later in time, that the judge presiding there would be able to take account of any conviction here.

MR. BLAIS: Your Honor is of course correct on that. The point that I was making is as a result of the second set of charges, the defendant faces, at least in theory, substantially more prison time than he would face based on a conviction solely on the matter pending before your Honor. And so the potential prison time, at least as measured by the guidelines and as measured by the statutory maximum for the various offenses with which he's charged, has increased in a substantial way, and certainly as a result of that the incentive to flee is of a very different variety than it may have been based solely on the case before your Honor.

Now, the other reality here is that this particular defendant is of advanced age -- he is 73 years old -- and a sentence of any substantiality may be -- you know, the defendant may be facing what is in essence a life -- a term of life imprisonment. And, again, that changes the calculus as to incentives to flee.

So in light of those facts, we do believe that revocation of the existing bail package would be appropriate.

THE COURT: Thank you, Mr. Blaze.

MR. BLAIS: Thank you.

THE COURT: Mr. Touger.

MR. TOUGER: Thank you, your Honor.

Your Honor, after listening to Mr. Blais speak, I don't think we are here on any right procedural grounds. As he stated in the 3142(f), there has to be new information. Mr. Blais has pointed out no new information actually when you look at the real facts of the situation. When Mr. Galanis was first arraigned after he self-surrendered in September, the government knew about this case, had full knowledge about this case. They had not proceeded to complaint yet. They had not proceeded to bring the actual charges yet, but they knew about the case. They were investigating it. They knew the situation. As a matter of fact, it was mentioned at Jason Galanis' original bail application back in September. They chose not to become public with the charges at that point, but they knew about it when they agreed to allow Mr. Galanis to be released on bail.

So there is no new information to them. There might be new information to this Court but no new information to the government. There is also no new information to Mr. Galanis. He knew about that these charges were at some point going to be brought when he was arraigned because he, of course, knows what was said at his son's bail application. So if Mr. Galanis wanted to run at that point because of all these new charges that were coming and the increased penalties, he has had since September 'til now to do that and of course we know he hasn't. So there is no new information there.

As far as the new information, the extensive repeating of Mr. Galanis' prior record, obviously both the Court and the government knew about that back in September when the government agreed to bail. And I think what's most important about that, your Honor, is that facing a 27-year sentence, he self-surrendered on that. He was out on bail and self-surrendered on that 27-year sentence to start serving. That proves that he is willing to do the time that he's been sentenced to.

As far as this argument that he's increased the time that he might be receiving on both now that he has a second case, that argument, while, yes, it is true, but we've known about that -- Mr. Galanis has known about that since September, and I have known about that since I came in on this case that's been out there for that. So he has known about that and hasn't run, hasn't done anything.

So I don't think there is any procedural grounds for us really to be here because there is no new information.

But getting to the facts as we know them, your Honor, Mr. Hirst is charged both cases. The government is not seeking to put him in. And I would argue, your Honor, from reading the new complaint, that Mr. Hirst's involvement in the new complaint is much more than Mr. Galanis' involvement. Basically, Mr. Galanis has done nothing on the new complaint since April of 2015, done nothing at all since that date, whereas Mr. Hirst has continued to be involved since then and they are not seeking his detention at all.

Also, the government stated that at the bail application in California where they sought detention, that the judge sort of just was passing the buck onto you, and from reading the record of that -- I wasn't there obviously but I had the record and I read it -- that was not the case, your Honor. The judge there questioned the U.S. Attorney representing the government quite in detail about why should I put him in, what information do you have that's different today than it was the day before you arrested him.

And I might also note just for the record, your Honor, that they didn't give Mr. Galanis the opportunity to self-surrender on this new complaint. He obviously would have. He self-surrendered on everything else in his life; he would have self-surrendered on this. They did not give him the opportunity. It wasn't like they had to arrest him because he was getting ready to get on a plane. They just did it, your Honor, for whatever effect they wanted that to cause.

But the Court in California was very detailed in their questioning of the government, saying give us -- give me a reason. And the reason the U.S. Attorney mentioned in California was that, well, in September Mr. Galanis didn't come forward and report this new crime to anybody. And the Court said, Wait, you're not alleging he has done anything since September. Nope, we're not alleging he has done anything. You don't think he has a duty to come forward and say about the crime, do you? He said, no, we don't think he has any duty to do that either. So the Court was like, then, what's the reason? And so the Court went on -- it was a 45-page detention hearing. I don't know if the Court has read it or not, but it wasn't just, oh, I'm not going to hear this, let the judge in New York take care of it. This was a detailed --

THE COURT: I would very much doubt that a judge would do that.

MR. TOUGER: Right.

THE COURT: The judge has the responsibility to set bail in the case, and a judge understands that's his or her responsibility and is nondelegable to some other judge and the judge ruled. So I take that as the ruling of the Court and mindful, as the judge may have been, that I could make a different determination with regard to the case before me.

MR. TOUGER: Of course, and that was mentioned. But I didn't want the Court to get the impression that this was a nondetailed detention hearing. There were lots of details talked about and lots of arguments made, and in the end the Judge ruled that Mr. Galanis could be released on the same bail conditions that he had posted here.

The other thing, your Honor, is that Mr. Galanis doesn't know any of the other defendants in this case besides, obviously, his son. The other defendants are all unknown to him and he has no relationship with them.

The other thing that's important to note here is, unlike Jason Galanis, Mr. Galanis, John Galanis, has done no conduct since the Gerova arrest, let's call it that, since September 24th on any new criminal charges. Whether it is the new case or any other case, the government has fairly admitted here it has no proof that he has done any criminal conduct since then, which is different from Mr. Galanis. Nor was

Mr. Galanis under any parole or probation of any type when it was alleged he did the Gerova conduct. And I think most importantly for the Court, having read the Court's -- the record from the Court's hearing with Mr. Jason Galanis, Mr. Galanis has done no contacting of any witnesses or any parties whatsoever at all. There is no allegation that Mr. Galanis has contacted anybody in either investigation.

So the other thing, your Honor, is that we -- Mr. Galanis -- and I told this to the government this morning and had been in touch with them -- has no doubt that he's going to jail in this case and that at some point he's hoping to work out a plea discussion -- hopefully a global plea discussion with everybody involved, and he understands that he's going to jail. He has no false hopes that he's going to get a non-jail sentence. And basically what he wants to do is get his medical conditions, which I'll go over in a second, taken care of, his personal situation taken care of, and then do the time that he thinks he's going to have to do.

And I don't mention his medical conditions very lightly because he has some very serious medical conditions. And I know the Court will say -- in the 25 years I have been appearing in this court, judges have said, you know, you get great care in the prison system. Your Honor, I've learned over 25 years that that is just not true, you don't get great care in the Bureau of Prisons. They give you the care that they deem necessary and it is the most minimal care possible.

And Mr. Galanis is in the very beginnings of trying to find out what certain conditions he has, and the government doesn't dispute any of these medical conditions. He has a prostate problem. We were just going to be sending a letter to the Court so we could have an MRI done prior to his arrest because we need to send a letter so they could take his bracelet off to do the MRI to find out exactly what it is. They believe it is prostate cancer. They don't know for sure until they do this test.

He has certain diabetes and renal issues also which are causing degeneration of his kidneys, and that needs to be -- the care for that needs to be taken care of.

He also has deterioration of his lower spine and legs where his S1 and 1.5 are sort of moving together and that needs to be taken care of.

And there is no doubt that once that the conditions are diagnosed and treated, that the Bureau of Prisons will be able to follow through on that treatment. That I have no argument with, your Honor, but they are not going to do all the tests to get these diagnoses done correctly in a timely fashion. And timeliness, as the Court is well aware, with cancer is very important.

So as I said, Mr. Galanis understands his future, but he would like to know that his medical conditions are diagnosed properly, that a treatment schedule is made out, and the Bureau of Prisons will give him, you know, whatever treatment he needs, I have no issues with that. But I have found through experience with many different clients and defendants that they are not very good on diagnostics, they are just not. And I could off the top of my head name three different clients I have had who have suffered serious medical deterioration because the Bureau of Prisons refused to treat certain issues.

So, your Honor, in summation, I don't think the government has outlined any fact to you that necessitates a revoking of Mr. Galanis' bail. He has appeared. Pretrial is very happy with him. He has done nothing in pretrial. He has kept all of their requests, all of their orders. He has been in constant contact with me. He has come to court on time whenever necessary. He has not done any new criminal conduct. This criminal conduct they are alleging here is not new to the government. They knew about it when they consented to bail back in September. They knew about his record back in September. They knew about when he absconded for 15 days, they knew about that back in September. There is nothing new here, your Honor, and there is no reason to put Mr. Galanis in jail three months prior to the point when it's probably necessary that he go to jail, especially with the medical conditions that he is under.

THE COURT: Thank you, Mr. Touger.

Mr. Blaze, anything further?

MR. BLAIS: Nothing further, your Honor.

THE COURT: All right. I am going to continue bail as it exists. This is a fundamentally different situation than the Court faced in the instance of Jason Galanis, an entirely different statutory framework, and I am available for further modification if the circumstances warrant it, require it, if there are changes in circumstance, changes in behavior, but at this stage of the game I'm satisfied to leave the existing bail conditions in place.

MR. TOUGER: Your Honor, now that you have made that ruling, as long as we are here, I just want to prewarn the Court that once we get a date for this MRI, you will be receiving a letter, because pretrial says obviously that you have to authorize it, for him to basically go into pretrial, have the bracelet taken off, do the MRI -- because they can't do an MRI with a bracelet on him, do the MRI --

THE COURT: We will take that up when I get the application and the government will have an opportunity to be heard. All right?

MR. TOUGER: Thank you.

THE COURT: What you should do is preview your application with the government.

MR. TOUGER: Of course.

THE COURT: So that way you can say to me they've consented or they haven't consented.

MR. TOUGER: Of course.

THE COURT: And we'll know where to go from there.

Thank you all very much.

MR. BLAIS: Thank you, your Honor.

MS. MERMELSTEIN: Thank you, your Honor.

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